IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2951 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINOD KUMAR ISHWARBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR ASHOK N PARMAR for Petitioner(s) : 1,
MR DIPEN DESAI, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/01/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order and/or direction

quashing and setting aside the order passed by the District Collector, Gandhinagar dated 24.5.1995 confirmed by the Revisional Authority dated 31.1.1996 passed in revision application No. SRD/5/95 by which, the allotment of the plot No.145/2 admeasuring 81 sq mts situated at Sector 6, Gandhinagar has been cancelled on the ground that the said plot was used for the purpose other than the residential purpose.

2. It is the case on behalf of the petitioner that the petitioner was allotted plot No.145/2 at Sector 6, Gandhinagar admeasuring 81 sq mts on concessional rate. It appears that one of the condition was that the petitioner has to use the same for his own residential purpose and cannot use for any other purpose other than residential purpose.

3. As it was found that the residential premises was converted into shop by putting shutter on front portion and some material was lying to show that the said residential plot and the construction was used for the purpose other than the residential purpose and therefore, the show cause notice came to be issued and the petitioner was directed to show cause why the allotment should not be cancelled. After giving an opportunity and considering the reply submitted by the petitioner, the District Collector, Gandhinagar passed the impugned order

dated 24.5.1995 and cancelled the allotment by holding that there is a breach of condition of allotment and that the said plot and the construction thereupon was used by the petitioner for the purpose other than the residential. The matter was carried out to the Revisional Authority and the Revisional Authority also dismissed the said application. Hence, the present special civil application has been filed.

4. By order dated 13.9.1996, the learned Single Judge of this Court granted the ad-interim relief on condition that the petitioner gives an undertaking to this Court within a period of 15 days to the effect that the petitioner shall not use the property in question except for the residential purpose for himself and his family and shall not permit any other person to use it for any other purpose. It appears that pursuant to the said order, the petitioner has filed the undertaking dated 19th September, 1996. No complaint has been made by the respondents that at present the property is used for the purpose other than the residential purpose.

5. Under the circumstances and when the petitioner is protected since 1996 and it appears that the property is used only for residential purpose and even the undertaking has been given by the petitioner to use the said residential premises

only for his residential purpose and for his family members, the impugned orders are hereby quashed and set aside. The petitioner is directed to act as per the undertaking given by him dated 19th September, 2006 meaning thereby, he and/or his family members shall not use the premises in question for the purpose other than the residential purpose. However, it is observed that if it is found by the Collector, Gandhinagar that there is a breach of undertaking then it will be open for the Collector to initiate fresh proceedings in accordance with law and on merits.

6. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

[M.R.Shah, J.]

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